HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.674 of 2007

Between:

Ramprakash Agarwal and others

. . .Appellants

AND

The Sub-Registrar, Champapet, Ranga Reddy
District and others

. . .Respondents

:: JUDGMENT ::

Counsel for the appellants : Shri Vedula Srinivas

August 23, 2007

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per G.S.SINGHVI, CJ

This is an appeal for setting aside order dated 11.6.2007 passed by the learned Single Judge whereby he dismissed the writ petition filed by the appellants for quashing the order passed by District Registrar, Ranga Reddy (respondent No.2 herein) in Appeal No.1/2007 (this order is said to have been communicated to the appellants on 17.3.2007) and notice dated 4.10.2006 issued by Sub-Registrar, Champapet (respondent No.1) for production of sanction of the Andhra Pradesh State Wakf Board (respondent No.3 herein) as a condition for registration of land measuring
Ac.4-15 gts. in Survey No.257 situated at Mamidipalli Village, Saroornagar Mandal, Ranga Reddy District.

A perusal of the record shows that Writ Petition No.18874 of 2006 filed by the appellants for directing respondent No.1 to pass order on their plea for registration of sale-deed dated 23.5.2006 was disposed of by the learned Single Judge on 13.9.2006 by directing the officer concerned to communicate reasons for not registering the documents. Thereafter, respondent No.1 issued memo dated 4.10.2006 stating that the appellants should obtain 'No Objection Certificate' from respondent No.3 as a condition for registration of the document. This was challenged by the appellants in Writ Petition No.21209 of 2006, which was dismissed on 13.10.2006 on the ground of availability of alternative remedy under Section 72 of the Registration Act, 1908 (for short, 'the Act'). Writ Appeal No.1275 of 2006 filed against that order was dismissed on 6.12.2006. Thereafter, the appellants filed an appeal under Section 72 of the Act, which was dismissed by respondent No.2 by assigning the following reasons:

"a) It is seen from the record that the property in question namely

land admeasuring Ac.4-15 gts. in Sy.No.257 of Mamidipally Village, Saroornagar Rev Mandal is admittedly a Wakf property as evidenced by the notification of the Government of Andhra Pradesh published vide Notification No.6A Dt.9.2.1989. As such it is incumbent on the part of the appellants to obtain No Objection Certificate/prior permission from the Wakf Board to alienate the land in question as contemplated in Section 51 of the Wakf Board Act, 1995. It is a statutory requirement for registration of the present sale deed.

b) It is also seen from the record that the appellants have not produced the no objection certificate as directed by the first respondent within the stipulated time in the notice and in these circumstances the first respondent had passed orders of refusal to register the document vide refusal order No.1/2007 19.02.2007. The notice and the subsequent order of refusal are based on the own analysis of facts and the relevant statutory provision of respondent No.1 and there is no illegality in calling for prior sanction/No Objection Certificate from Wakf authorities before alienating the property.

c) Section 72 says that if for any reason, the registering officer refused to register the document, he has to record reasons and furnish a copy of the reason, on a request made by the person presenting the document for registration and in case the registration is refused, the person aggrieved may file an appeal before the Registrar who may reverse or alter the orders passed by the Sub-Registrar. What is contemplated in Section 72 is an appeal to the registrar against the orders of refusal. While this is so, the present appeal is filed against the orders of notice. It is relevant to mention here that by the time the present appeal is filed i.e. on 24.2.2007, the final orders of refusal have already been passed on 19.2.2007 and the same is communicated to the appellants.

d) Even under the instructions of the Government, the registering officer is entitled to refuse to register documents if such registration is prohibited under any specific statutory provisions contained in any Act. In the instant case, the property in question is evidently a Wakf Board property for alienation of which prior permission/No Objection Certificate from the Wakf board is a must for registration and hence insistence of produce of No Objection Certificate by respondent No.1 for registration of the document cannot be found fault with."

The appellants challenged the above-mentioned order in Writ Petition No.5739 of 2007, which was dismissed by the learned Single Judge on the premise that in terms of the judgment of the Division Bench, the only course open to the appellants is to avail remedy by

filing civil suit.

Shri V. Srinivas, learned counsel appearing for the appellants fairly stated that while dismissing Writ Appeal No.1275 of 2006, the Division Bench had unequivocally held that in the event of dismissal of the appeal filed under Section 72 of the Act, the appellants shall be free to avail remedy by filing civil suit, but argued that the same should not have been made by the learned Single Judge as the sole ground for declining relief to his clients.

We have considered the submission of the learned counsel, but have not felt convinced. While dismissing the writ appeal preferred against order dated 13.10.2006 passed in Writ Petition No.21209 of 2006, the Division Bench made a reference to the provisions of Sections 71, 72 and 77 of the Act and observed/held as under:

> An analysis of the above reproduced provisions make it clear that refusal of the Sub-Registrar to register the document must be accompanied by reasons to be recorded by the officer in Book No.2. This requirement is not applicable when refusal to register the document is founded on the premise that the property is not situated within his domain. If the person executing the document or making claim under the document makes an application, the Sub-Registrar has to supply him a copy of the reasons recorded by him. This section represents statutory embodiment of one of the facets of rules of natural justice, which obligates every quasi-judicial authority to record reasons in support of its decision and communicate the same to the aggrieved person. Section 72 provides for an appeal against an order passed by the Sub-Registrar refusing to admit a document to registration except when such refusal is made on the ground of denial of execution. Under sub-section (1) of Section 72, the Registrar can reverse or modify the order of the Sub-Registrar. If the Registrar directs registration of the document, then the Sub-Registrar is obliged to take steps for registration of such document. If the Registrar refuses to order registration of the document, then any person claiming under such document, or his representative, assignee or agent can file a suit in the Civil Court for grant of a decree directing registration of the document. Sections 73, 74, 75 and 76, which belong to one family, provide for submission of application to the Registrar where Sub-Registrar refuses to register document on the denial of execution and also for disposal of such application.

These provisions, which form integral part of the scheme of the Act, constitute a complete Code unto themselves. Therefore, the remedies of appeal and suit available to the aggrieved person under Sections 72 and 77 of the Act have to be treated as effective alternative remedies.

At the cost of repetition, we deem it proper to observe that the remedies available to the appellants under Sections 72 and 77 of the 1908 Act are effective alternative remedies and there is no extra-ordinary reason for making a departure from the settled law that the High Court will not entertain writ petition under Article 226 of the Constitution if an effective alternative remedy is available to the petitioner – **A.V. Venkateshwaran v. R.S. Wadhwani**[1], **Thansingh Nathmal v. Superintendent of Taxes**[2], **Baburam v. Zilla Parishad**[3], **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[4], **Champa Lal v. I.T. Commissioner**[5], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[6], **C.I.T. v. Ramendra Nath Ghosh**[7], **Swadeshi Cotton Mills Co. Ltd., v. Government of U.P.**[8], **Gujarat University v. N.U. Rajguru**[9], **State of H.P. v. Raja Mahendra Pal**[10], **L.L. Sudhakar Reddy v. State of A.P.**[11], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[12], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[13], **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,**[14].

In **Harbanslal Sahnia v. Indian Oil Corporation Ltd.** (supra), the Supreme Court considered the situations in which the High Court can exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See **Whirlpool Corpn. v. Registrar of Trade Marks {(1998) 8 SCC 1**}. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership,

which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

The case of the appellant does not fall within the ambit of any of the exceptions enumerated in **Harbanslal Sahnia's** case (supra). Therefore, it is not possible for the Court to overlook the fact that they have effective alternative remedies by way of appeal and suit.

It is neither the pleaded case of the appellants nor Shri V. Srinivas argued that his clients had challenged the judgment of the Division Bench by filing petition for Special Leave to Appeal. Therefore, it is not possible to entertain his submission that notwithstanding the judgment of the Division Bench in Writ Appeal No.1275 of 2006, the learned Single Judge should have entertained the writ petition filed against the order passed under Section 72 of the Act.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.1348 of 2007 filed by the appellants for interim relief is also dismissed.

G.S.SINGHVI, CJ

August 23, 2007

C.V.NAGARJUNA REDDY, J

svs

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[1] AIR 1961 SC 1506

[2] AIR 1964 SC 1419

[3] AIR 1969 SC 556

[4] (1983) 2 SCC 433

[5] AIR 1970 SC 645

[6] AIR 1970 SC 1980

[7] (1972) 4 SCC 379

[8] (1975) 4 SCC 378

[9] AIR 1988 SC 66

[10] (1999) 4 SCC 43

[11] (2001) 6 SCC 634

[12] (2002) 1 SCC 216

[13] (2003) 2 SCC 107

[14] (2004) 3 SCC 553